IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

M.A.CA.No.1913 of 2005(D)

AGAINST THE ORDER DATED 21/06/2005 IN I.A.NO.337/2005 IN O.P.(M.V).NO.1122/2003 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI.

.....

APPELLANTS/PETITIONERS:-

---

1. HYDROSE, S/O. CHEKKUMAYINKUTTY,
   KAPPOORAN HOUSE, POOVATHIPPOYIL,
   VAZHIKKADAVU AMSOM DESOM.

2. KHADEEJA, W/O. HYDROSE,
   KAPPOORAN HOUSE, POOVATHIPPOYIL,
   VAZHIKKDAVU AMSOM DESOM.

3. JUBAIRIYATH K., D/O. HYDROSE,
   KAPPOORAN HOUSE, POOVATHIPPOYIL,
   VAZHIKKDAVU AMSOM DESOM.

4. ANVAR K., S/O. HYDROSE,
   KAPPOORAN HOUSE, POOVATHIPPOYIL,
   VAZHIKKADAVAU AMSOM DESOM.

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENTS/RESPONDENTS:-

---

1. P.K. KUNJIKOYA, S/O. KUNJU AHAMMED,
   POLATHOTTIKA HOUSE, POOVATHIPPOYIL
   VAZHIKKADAVU AMSOM.

2. MANSOOR ALI, S/O. MOYIN HAJI,
   PULLIKKODAN HOUSE, KIDANGAZHI,
   KARUVAMBRAM, MANJERI.

3. THE NEW INDIA ASSURANCE CO.LTD.,
   CHEROOTTI ROAD, CALICUT.

R1 BY ADV. SRI.P.SAMSUDIN
R2 BY ADV.SRI.BABU S.NAIR.
R3 BY STANDING COUNSEL SRI.LAL GEORGE.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

M.A.C.A.No.1913 of 2005-D

Dated, this the 5th day of March, 2007

JUDGMENT

The challenge in this appeal is against a part of the interim award passed by the Motor Accidents Claims Tribunal, Manjeri by which the Tribunal exonerated the Insurer from paying the amount. The petitioners, who are the legal representatives of the deceased Noushad, filed the claim petition seeking compensation on account of the death of the deceased in a road traffic accident. In the petition it was averred that the deceased was a passenger in a Goods vehicle at the time of incident. Subsequently, the petitioners filed a petition to amend the Original Petition contending that such an averment was made due to an inadvertent omission. It was contended that actually the deceased was not a traveller, but he was the Cleaner of the lorry and in that capacity he was travelling in the Goods vehicle. The Tribunal passed an order allowing the amendment. In the meanwhile, the petitioners filed I.A.No.2587 of 2004 under Section 140 of the Motor Vehicles Act, 1988 claiming an interim

award. The Tribunal allowed that application. But, on account of the admission made by the petitioners in the Original Petition to the effect that the deceased was a traveller, it was held that the Insurer has no liability to pay the amount awarded. The owner was directed to pay the amount. The claimants filed a petition as I.A.No.337 of 2005 to review that part of the order. The Tribunal dismissed the review petition. Challenging the order passed in the review petition, this appeal is filed.

2. The learned counsel appearing for the petitioners has argued that it was due to an inadvertent omission on the part of the advocate at the time of drafting the claim petition it was stated that the deceased was a traveller in a Goods vehicle. It is also contended that at that time the averment would not have any difference as this Court was consistently taking a view that even if the victim was a traveller, he is entitled to get compensation. But, subsequently, that position has changed and the position was clarified. A gratuitous passenger in a Goods vehicle is not entitled to claim compensation from the Insurer. It is argued that the petitioners filed a petition to amend the pleadings. It is submitted that in the F.I.R. itself, which was

registered immediately after the incident, it was clearly stated that the deceased was travelling in the vehicle as a Cleaner. It is submitted that the owner and driver of the vehicle is not disputing that aspect and only because of the mistake committed by the counsel while drafting the claim petition, the Insurer had disputed the liability. It is also argued that the vehicle is covered by a valid policy of Insurance and as such the Insurer is liable to pay the compensation.

3. Sri.Lal George, learned counsel appearing for the Insurer has contended that in view of the admission made by the petitioners that the deceased was a gratuitous passenger in the Goods vehicle, the decision of the Tribunal is correct and no ground is made out to review that order. According to him, he is not aware of any amendment made to the Original Petition.

4. Considering the assertion made by the counsel for the petitioners that the pleadings were amended in the year 2005 and also the contention that the petitioners had produced the F.I.R. and other records to show that the deceased was travelling in the vehicle as a Cleaner of the lorry, I am of the view that the Tribunal ought to have allowed the petition to review and heard

the petition under section 140 of the Act once again. For that purpose, the matter has to go back.

In the result, this appeal is allowed. The order passed by the Tribunal dismissing I.A.No.337 of 2005 in O.P.(M.V.). No.1122 of 2003 is hereby set aside. I.A.No.337 of 2005 is allowed and the order passed by the Tribunal in I.A.No.2587 of 2004 is also set aside. The Tribunal is directed to take I.A.No.2587 of 2004 back to file and dispose of the same afresh in accordance with law, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

K.Padmanabhan Nair
Judge

vku/-